

CIVIL COVER SHEET

ORIGINAL

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the docket sheet. (SEE INSTRUCTIONS ON PAGE TWO.)

I.(a) PLAINTIFFS

Wu, Minzhi

DEFENDANTS

U.S. Dept of Justice: Mukasey, Michael, U.S. Attorney General
D.H.S.: Chertoff, Michael, Secretary
U.S.C.I.S.: Gonzalez, Emilio T., Director
F.B.I.: Mueller III, Robert S., Director

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

San Francisco County

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Law Offices of Jean D. Chen, 2107 N. First St. #400, San Jose, CA
95131. (408) 437-1788. Justin Fok, CSB# 242272,

ATTORNEY (FIRM NAME)

U.S. Attorney

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

☐ 1 U.S. Government Plaintiff☐ 3 Federal Question
(U.S. Government Not a Party)☒ 2 U.S. Government Defendant☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

Citizen of This State ☐ PTF ☐ DEFCitizen of Another State ☐ 2 ☐ 2Citizen or Subject of a Foreign Country ☐ 3 ☐ 3Incorporated or Principal Place of Business In This State ☐ PTF ☐ DEFIncorporated and Principal Place of Business In Another State ☐ 5 ☐ 5Foreign Nation ☐ 6 ☐ 6

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

☒ Original Proceeding☐ Removed from State Court☐ Remanded from Appellate Court☐ Reinstated or Reopened☐ Transferred from Another district (specify)☐ Multidistrict Litigation☐ Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT

- ☐ 110 Insurance
☐ 120 Marine
☐ 130 Miller Act
☐ 140 Negotiable Instrument
☐ 160 Recovery of Overpayment & Enforcement of Judgment
☐ 161 Medicare Act
☐ 162 Recovery of Defaulted Student Loans (Excl Veterans)
☐ 163 Recovery of Overpayment of Veterans' Benefits
☐ 160 Stockholders Suits
☐ 190 Other Contract
☐ 195 Contract Product Liability
☐ 196 Franchise

TORTS

PERSONAL INJURY

☐ 310 Airplane
☐ 315 Airplane Product Liability☐ 320 Assault Libel & Slander☐ 330 Federal Employers Liability☐ 340 Marine☐ 345 Marine Product Liability☐ 350 Motor Vehicle☐ 355 Motor Vehicle Product Liability☐ 360 Other Personal Injury

PERSONAL INJURY

☐ 362 Personal Injury Med Malpractice☐ 365 Personal Injury Product Liability☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY

☐ 370 Other Fraud☐ 371 Truth In Lending☐ 380 Other Personal Property Damage☐ 385 Property Damage Product Liability

FORFEITURE/PENALTY

- ☐ 610 Agriculture
☐ 620 Other Food & Drug
☐ 625 Drug Related Seizure of Property 21 USC 881
☐ 630 Liquor Laws
☐ 640 RR & Truck
☐ 650 Airline Regs
☐ 660 Occupational Safety/Health
☐ 690 Other

LABOR

- ☐ 710 Fair Labor Standards Act
☐ 720 Labor/Mgmt Relations
☐ 730 Labor/Mgmt Reporting & Disclosure Act
☐ 740 Railway Labor Act
☐ 790 Other Labor Litigation
☐ 791 Empl.Ret. Inc. Security Act

BANKRUPTCY

- ☐ 422 Appeal 28 USC 158
☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS

- ☐ 820 Copyrights
☐ 830 Patent
☐ 840 Trademark

SOCIAL SECURITY

- ☐ 861 HIA (1395ff)
☐ 862 Black Lung (923)
☐ 863 DIWC/DIWW (405(g))
☐ 864 SSID Title XVI
☐ 865 RSI (405(g))

FEDERAL TAX SUITS

- ☐ 870 Taxes (US Plaintiff or Defendant)
☐ 871 IRS - Third Party 26 USC 7609

OTHER STATUTES

- ☐ 400 State Reapportionment
☐ 410 Antitrust
☐ 430 Banks and Banking
☐ 450 Commerce/ICC Rates/etc.
☐ 460 Deportation
☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 810 Selective Service
☐ 850 Securities/Commodities Exchange
☐ 875 Customer Challenge 12 USC 3410
☐ 891 Agricultural Acts
☐ 892 Economic Stabilization Act
☐ 893 Environmental Matters
☐ 894 Energy Allocation Act
☐ 895 Freedom of Information Act
☐ 900 Appeal of Fee Determination Under Equal Access to Justice
☐ 950 Constitutionality of State Statutes
☒ 890 Other Statutory Actions

REAL PROPERTY

- ☐ 210 Land Condemnation
☐ 220 Foreclosure
☐ 230 Rent Lease & Ejectment
☐ 240 Torts to Land
☐ 245 Tort Product Liability
☐ 290 All Other Real Property

CIVIL RIGHTS

- ☐ 441 Voting
☐ 442 Employment
☐ 443 Housing
☐ 444 Welfare
☐ 440 Other Civil Rights
☐ 445 Amer w/ disab - Empl
☐ 446 Amer w/ disab - Other
☐ 480 Consumer Credit
☐ 490 Cable/Satellite TV

PRISONER PETITIONS

- ☐ 610 Motion to Vacate Sentence Habeas Corpus:
☐ 630 General
☐ 635 Death Penalty
☐ 640 Mandamus & Other
☐ 650 Civil Rights
☐ 655 Prison Condition

VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Petition for Hearing on Naturalization Application Under 8 U.S.C. §1447(b)

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$ ☐ CHECK YES only if demanded in complaint: UNDER F.R.C.P. 23 JURY DEMAND: ☐ YES ☒ NO

VIII. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE"

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)

(PLACE AND "X" IN ONE BOX ONLY)

☒ SAN FRANCISCO/OAKLAND☐ SAN JOSE

DATE

SIGNATURE OF ATTORNEY OF RECORD

2/27/08

Justin Fok

ORIGINAL

Fee Paid

SI

99

Filed

FEB 29 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

ADR

E-FILING

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Email: jfok@jclawoffice.com

Attorney for Plaintiff
Minzhi Wu

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
COMPLAINT

Minzhi Wu,

Plaintiff,

v.

Michael Mukasey, United States Attorney
General;
Michael Chertoff, Secretary of the
Department of Homeland Security;
Emilio T. Gonzalez, Director of United States
Citizenship and Immigration Services;
Robert S. Mueller III, Director of Federal
Bureau of Investigation,

Defendants.

Case No.

008 01229

PJH

PETITION FOR HEARING ON
NATURALIZATION APPLICATION
UNDER 8 U.S.C. § 1447(b)

Immigration Case

Plaintiff Minzhi Wu, by and through her attorney of record, opens this lawsuit against the
Defendants and will show this Court the following:

1. This action is brought for a hearing to decide Plaintiff's naturalization application due to
Defendants' failure to adjudicate the application within 120 days after the first examination in
violation of the Immigration and Nationality Act ("INA") § 336(b) and 8 U.S.C. § 1447(b).

PARTIES

2. Plaintiff Minzhi Wu is a lawful permanent resident of the United States who has applied for naturalization with the United States Citizenship and Immigration Services ("USCIS"). Plaintiff resides in San Francisco, California, which is within the jurisdiction of this court.

3. Defendant Michael Mukasey is the United States Attorney General and this action is brought against him in his official capacity. Defendant has the authority to administer the oath of allegiance and is the sole authority to naturalize persons as citizens of the United States. Defendant Mukasey is also the head of the Department of Justice, which is the federal agency responsible for the Federal Bureau of Investigation and the National Name Check Program.

4. Defendant Michael Chertoff is the Secretary of the Department of Homeland Security ("DHS"), and this action is brought against him in his official capacity. He is generally charged with enforcement of the Immigration and Nationality Act and its related regulations, which provide for the processing of naturalization applications.

5. Defendant Emilio T. Gonzalez is the Director of the USCIS, and this action is brought against him in his official capacity. Defendant Director is responsible for the overall administration of benefits and immigration services for the USCIS, including naturalization.

6. Defendant Robert S. Mueller, III, is Director of the Federal Bureau of Investigation ("FBI"), and this action is brought against him in his official capacity. The FBI is the law enforcement agency that conducts security clearances for U.S. government agencies, such as the Department of State and the USCIS. As will be shown, Defendant Mueller has yet to complete the security clearances on Plaintiff's case.

JURISDICTION

7. Jurisdiction in this case is proper under the INA § 336(b) and 8 U.S.C. § 1447(b). Relief is requested pursuant to said statutes.

VENUE

8. Venue is proper in this honorable court, pursuant to 8 U.S.C. § 1447(b), in that Plaintiff may request a hearing on the matter in the District where Plaintiff resides.

1 **INTRADISTRICT ASSIGNMENT**

2 9. This lawsuit should be assigned to the San Francisco or Oakland Division of this court
3 because a substantial part of the event or omission which give rise to this lawsuit occurred in San
4 Francisco County.

5 **CAUSE OF ACTION**

6 10. Plaintiff is a lawful permanent resident (A 077 176 108) of the United States. Plaintiff
7 filed an N-400, *Application for Naturalization* with the USCIS on June 23, 2004 (**EXHIBIT 1**).

8 11. Plaintiff completed her naturalization interview and examination at the USCIS San
9 Francisco District Office on February 3, 2005. Plaintiff passed the English and U.S. History and
10 Government examination, but was informed that a decision could not be made due to a pending
11 FBI name check (**EXHIBIT 2**).

12 12. Plaintiff has made numerous inquiries with the USCIS and each time she has been told
13 that her case is pending due to the FBI name check background investigation (**EXHIBIT 3**).

14 13. 1119 days have elapse since Plaintiff's naturalization examination.

15 14. Defendants have yet to make a determination on Plaintiff's N-400 application.

16 15. Defendants, in violation of 8 U.S. C. §1447(b), have failed to make a determination on
17 Plaintiff's naturalization application within the 120-day period after the date of examination.

18 **PRAYER**

19 16. WHEREFORE, in view of the arguments and authority noted herein, Plaintiff
20 respectfully prays that the Defendants be cited to appear herein and that, upon due consideration,
21 the Court:

22 (a) assume jurisdiction over this matter;

23 (b) should the Court deem it necessary, order that a hearing take place on this matter;

24 (c) review this matter de novo, and approve Plaintiff's N-400, *Application for*
25 *Naturalization*; or

26 (d) remand the matter with specific instructions for Defendants to complete adjudication
27 of the N-400 within 60 days of receiving the remand order;

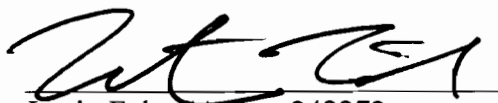
28 (e) award reasonable attorney's fees and costs under the Equal Access to Justice Act;

(f) grant any other relief at law and in equity as justice may require.

Dated:

2/15/08

Respectfully submitted,



Justin Fok, CA Bar: 242272

Attorney for Plaintiff

LIST OF ATTACHMENTS

Exhibit	Description
1	N-400 Application for Naturalization Receipt Notice
2	N-400 Naturalization Interview Results
3	Inquiry Responses from the USCIS

Exhibit 1

THE UNITED STATES OF AMERICA

Receipt with Exception			NOTICE DATE August 19, 2004
CASE TYPE N400 Application For Naturalization			INS A# A 077 176 108
APPLICATION NUMBER WSC*001169077	RECEIVED DATE June 23, 2004	PRIORITY DATE June 23, 2004	PAGE 1 of 1

APPLICANT NAME AND MAILING ADDRESS
MINZHI WU
[REDACTED]
SAN FRANCISCO CA 94112

PAYMENT INFORMATION:
Single Application Fee: \$390.00
Total Amount Received: \$390.00
Total Balance Due: \$0.00

|||||

The above application has been received by our office and is in process, but has been noted with one or more of the following exception(s):
Missing Evidence(s) - your application was missing evidence(s) that you will need to provide at the time of your naturalization interview. You will be notified under separate notice of the necessary evidence(s) that you will be required to bring to your interview. Do not submit any evidence(s) by mail.

Our records indicate your personal information is as follows:
Date of Birth: [REDACTED]
Address Where You Live: [REDACTED]
SAN FRANCISCO CA 94112

Please verify your personal information listed above and immediately notify our office at the address or phone number listed below if there are any changes.

You will be notified of the date and place of your interview when you have been scheduled by the local INS office. You should expect to be notified within 460 days of this notice.

IMPORTANT NOTICE: All naturalization applicants who were between the ages of 14-75 at the time of filing must have their fingerprints taken at an INS Application Support Center (ASC) so they can be submitted to the Federal Bureau of Investigation for a criminal history check. If we received your application without a fingerprint card (FD-258), or your fingerprint card was received on or after December 3, 1997, you will need to go to an ASC to be fingerprinted. Do not have your fingerprints taken anywhere else. You will receive a notice that will provide you with information about when and where to go to have your fingerprints taken, and what you will need to bring with you. Please inform the office listed below immediately of any address changes.

If you have any questions or comments regarding this notice or the status of your case, please contact our office at the below address or customer service number. You will be notified separately about any other cases you may have filed.

If you have other questions about possible immigration benefits and services, filing information, or INS forms, please call the INS National Customer Service Center (NCSC) at 1-800-375-5283. If you are hearing impaired, please call the NCSC TDD at 1-800-767-1833.

If you have access to the Internet, you can also visit INS at www.ins.usdoj.gov. Here you can find valuable information about forms and filing instructions, and about general immigration services and benefits. At present, this site does not provide case status information.

INS Office Address:
US IMMIGRATION AND NATURALIZATION SERVICE
CALIFORNIA SERVICE CENTER
P.O BOX 10400
LAGUNA NIGUEL CA 92607-

INS Customer Service Number:
(800) 375-5283

APPLICANT COPY

WSC001259905

Form I-797 (Rev. 11/28/03) N

Exhibit 2

Department of Homeland Security
U.S. Citizenship and Immigration Services

N-652, Naturalization Interview Results

A#:

7717618

On

2/3/05

, you were interviewed by USCIS officer

LEE

- ☒ You passed the tests of English and U.S. history and government.
- ☐ You passed the tests of U.S. history and government and the English language requirement was waived.
- ☐ USCIS has accepted your request for a Disability Exception. You are exempted from the requirement to demonstrate English language ability and/or a knowledge of U.S. history and government.
- ☐ You will be given another opportunity to be tested on your ability to _____ speak/_____ read/_____ write _____ English.
- ☐ You will be given another opportunity to be tested on your knowledge of U.S. history and government.
- ☒ Please follow the instructions on Form N-14.
- ☐ USCIS will send you a written decision about your application.
- ☐ You did not pass the second and final test of your _____ English ability/ _____ knowledge of U.S. history and government. You will not be rescheduled for another interview for this Form N-400. USCIS will send you a written decision about your application.

A) _____ Congratulations! Your application has been recommended for approval. At this time it appears that you have established your eligibility for naturalization. If final approval is granted, you will be notified when and where to report for the Oath Ceremony.

B) _____ A decision cannot yet be made about your application.

It is very important that you:

- ☒ Notify USCIS if you change your address
- ☒ Come to any scheduled interview.
- ☒ Submit all requested documents.
- ☒ Send any questions about this application in writing to the officer named above. Include your full name, Alien Registration Number (A#), and a copy of this paper.
- ☒ Go to any Oath Ceremony that you are scheduled to attend.
- ☒ Notify USCIS as soon as possible in writing if you cannot come to any scheduled interview or Oath Ceremony. Include a copy of this paper and a copy of the scheduling notice.

NOTE: Please be advised that under section 336 of the Immigration and Nationality Act, you have the right to request a hearing before an immigration officer if your application is denied, or before the U.S. district court if USCIS had not made a determination on your application within 120 days of the date of your examination.

Exhibit 3

U.S. Department of Homeland Security
San Francisco, CA 94111



U.S. Citizenship
and Immigration
Services

MINZHI WU
[REDACTED]

SAN FRANCISCO CA 94112

File No. A77 176 108

App Id: WSC*001169077

Date: 06/17/2005 cw

Officer:

Re: Pending N-400 for Background Check

This is in response to your recent inquiry. A review of your application shows that your Form N-400, Application for Naturalization, is still pending for the completion of all necessary background checks. Unfortunately a decision on your application cannot be made until all required security checks have been completed. All cases pending for security checks are regularly reviewed for any new cases that have cleared. We apologize for the delay and request your cooperation and patience in waiting for these important checks to be completed.

Thank you for your cooperation and patience.

U.S. Citizenship and Immigration Services
630 Sansome Street
San Francisco CA 94111

Sincerely,

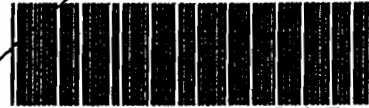
A handwritten signature in black ink, appearing to read "David N. Still".

David N Still

District Director

INFOPASSYour e-Ticket to Immigration
Information.**Name: Cathy Minzhi Wu****Appointment Question about case****Type:****Confirmation SFR-06-54005****No.:****Appointment January 3, 2007****Date:**

Feb. 15

Authentication 174f3**Code:****Appointment 8:00****Time: AM****Location: 444 WASHINGTON STREET, San Francisco, CA 94111; LOBBY****This is your Confirmation
Number:***** S F R - 0 6 - 5 4 0 0 5 *****If you wish to cancel this appointment, you will need the
following Personal Identification Number:****11454**

Please be on time. Failure to show up on time will result in the cancellation of your appointment. You will then need to reschedule your appointment. You will not be admitted more than 15 minutes before your scheduled appointment time.

- **You must appear in person and bring photo identification along with this appointment letter.**
- **Acceptable forms of identification are any of the following: Government issued identification, passport, valid driver's license, I-94, Work Authorization Card, or Permanent Resident Card. (Green Card)**
- **In order to serve you more efficiently, we require you to bring all applicable immigration forms, letters, receipts, translations and originals of supporting documents.**
- **NOTE: Cell phones that have camera features are not permitted in the building. Food and drinks are not permitted in the waiting room. In order to facilitate easy and swift entrance, you are advised to keep handbags and metal objects to a minimum by leave such items at home or with persons who will remain outside the building.**

U.S. Department of Homeland Security
630 Sansome Street
San Francisco, CA 94111



U.S. Citizenship
And Immigration
Services

Dear Mr. MINZHI WU

A77 176 108

May 24, 2007

1. ☐ Service records indicate that you filed an application for citizenship on . After filing your application, you should have received a notice for fingerprinting within four months. After fingerprinting, you should be scheduled for an interview within 12 months.
2. ☐ Service records indicate that you missed your scheduled citizenship appointment. You should be rescheduled for an interview within 3 months.
3. ☐ You will be scheduled for a reexamination within three months. Our records show that you did not pass the examination at your first interview.
4. ☐ Service records indicate that you missed your preliminary interview on . Per Service regulations your application was Administratively Closed on . From the date of closing you had one year to reopen your case. The Service did not receive any new information within the one year. You will need to re-file a new N-400.
5. ☐ Your file has been ordered from the National Record Center. Please allow three months for receipt and review of the file.
6. ☐ Service records show that your case was denied on . Records show that the denial was sent to the address on record. You will need to re-file for citizenship once eligibility is established. If you need a duplicate copy of the denial letter, you may request one via the Freedom of Information Act.
7. ☐ The Service is unable to locate any record of your N-400 application. Please submit to the address below the following documents: a copy of your N-400, a copy of your alien registration card, proof of payment and a copy of any previous I.N.S. correspondence you have received regarding the application.
8. ☐ Service records show that your fingerprint check has expired. Before the Service can make a final decision on your case, a current set of fingerprints must be on file. Attached is Form N14 for fingerprinting. Please follow the instructions for fingerprinting.
9. ☐ We were unable to process your inquiry because you did not provide your alien registration number or the alien registration number you provided was incorrect. Please note your alien registration number: A _____ and make a copy of your alien registration card. Return this notice and all documents to the address below.
10. ☒ Your N-400 application is still pending. The case is being handled by another unit. They will contact you directly with more information.

MINZHI WU
111 WESTWOOD DRIVE
SAN FRANCISCO, CA. 94112

For future inquiries, address changes or to request forms, you may call the INS National Customer Service Center at 1-800-375-5283. You can also visit the CIS Information Unit at 444 Washington Street in San Francisco or visit the CIS website at www.uscis.gov.



Name: Minzhi Wu

Appointment Type: Question about case

Confirmation No.: SFR-08-2680

**Authentication 172da
Code:**

Appointment Date: January 31, 2008

Appointment Time: 7:45 AM

**Location: 444 WASHINGTON STREET, San Francisco, CA 94111;
LOBBY**

**This is your Confirmation
Number:**



**If you wish to cancel this appointment, you will need the
following Personal Identification Number:
60375**

Please be on time. Failure to show up on time will result in the cancellation of your appointment. You will then need to reschedule your appointment. You will not be admitted more than 15 minutes before your scheduled appointment time.

- **You must appear in person and bring photo identification along with this appointment letter.**
- **Acceptable forms of identification are any of the following: Government issued identification, passport, valid driver's license, I-94, Work Authorization Card, or Permanent Resident Card. (Green Card)**
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